

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**EXHIBIT  
B**

<b>In re PAYMENT CARD INTERCHANGE FEE AND MERCHANT DISCOUNT ANTITRUST LITIGATION</b>	<b>MDL No. 1720(MKB)(VMS) Civil No. 05-5075(MKB)(VMS)</b>
<b>This Document Relates To:  ALL ACTIONS.</b>	<b>[PROPOSED] ORDER APPOINTING SUBCLASS COUNSEL</b>

**DECLARATION OF N. ALBERT BACHARACH IN SUPPORT OF THE  
FED. R. CIV. P. 23(A) AND 23(B)(3) SUBCLASS CERTIFICATION AND  
MOTION FOR APPOINTMENT AS SUBCLASS COUNSEL**

I, N. Albert Bacharach, Jr, declare as follows:

1. I am an attorney of record in the above styled action and one of the attorneys of record for Jack Rabbit. I submit this Declaration in Support of Appointment as Co-Subclass Counsel for Retail Gas Station Owner Franchisee pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) Subclass Certification.

2. I am personally familiar with the facts set forth in this Declaration. If called as a witness, I could and would testify to the matters stated herein.

3. My experience in class action litigation and complex litigation includes my representation of clients in the following cases:

In re: Payment Card Interchange Fee And Merchant Discount Antitrust Litigation, USDC Eastern District of New York, No. 05-MD-01720 (MKB) (JO) (Representing Objector/Proposed Intervenor/Proposed Subclass representative Jack Rabbit)

IN RE: Lumber Liquidators Chinese-manufactured Flooring Products Marketing, Sales Practices and Products Liability Litigation, 18-2351 (L), United States Court of Appeals for the Fourth Circuit, Successfully

represented the Appellant on Appeal)

Campbell. et al. v. Braun. et al., 98-8605-CAA Marion County, Florida (Class certified, de-certified on appeal.)

Dunmore. et al. v. The Progressive Corporation. et al. MDL Docket No.: 1519 USDC Northern District of Florida (Putative class - different class complaint certified for settlement purposes. In association with other counsel, on behalf of Ms. Dunmore, I objected to and successfully appealed, the proposed settlement.)

4. Undersigned Counsel seeks Subclass certification for Retail Gas Station Franchisees of integrated oil companies, and Jack Rabbit's appointment as subclass representative and his counsel's appointment as subclass counsel.

5. The Subclass of Retail Gas Station Franchisees of integrated oil companies have met the requirements for certification under Rule 23(a) and Rule 23(c)(5).

a. The Subclass of Retail Gas Station Franchisees of integrated oil companies is so numerous that joinder of all members is impractical.

b. The Subclass of Retail Gas Station Franchisees of integrated oil companies are Cost-Plus Direct Purchasers under *Illinois Brick*.

c. Jack Rabbit has claims that are typical of the Subclass.

d. Jack Rabbit, and his Counsel, will fairly and adequately represent the interests of the Subclass.

6. Jack Rabbit, through counsel, since July of 2019 has zealously litigated on behalf of Retail Gas Station Franchisees (See Jack Rabbit's Objections To Both The Proposed Settlement And Class Counsel's Request For Attorney's Fees; And Notice Of Intent To Appear, Dkt. No. [7574]) and argued in favor of establishing a subclass for Branded Operators. (See Fairness Hearing

Transcript Pages 15 – 26)

7. Jack Rabbit's counsel identified, at the Fairness Hearing, the Class Counsel conflict reiterated by the 2nd Circuit. (See Fairness Hearing Transcript Page 21, lines 10-12)
8. Counsel for Jack Rabbit has no conflicts in representing the subclass of Branded Operators/Franchisees.
9. Counsel for Jack Rabbit has the requisite knowledge, expertise and resources needed to represent the Retail Gas Station Franchisees in this case.
10. Counsel for Jack Rabbit is the best applicant for Subclass Counsel under Rule 23(g) and should therefore be appointed Subclass Counsel pursuant to Rule 23(g)(2).
11. The statements contained in this declaration are true and correct and of personal knowledge.

Executed this 26th day of May 2023, by: /s/ N. Albert Bacharach, Jr.  
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